

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 40 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

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STATE OF GUJARAT

Versus

MANGILAL C.PATEL

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Appearance:

Shri M.A.Bukhari, Additional Public Prosecutor, for the appellant - State.

Kum. Parul Patel, Advocate, for the respondent - accused (Amicus curiae).

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 23/10/96

ORAL JUDGEMENT

The adequacy of sentence of Rs.500 in default simple imprisonment for 15 days for the offence

punishable under Section 92 read with section 21 (1) (iv) (c) of the Factories Act, 1948 (the Act for brief) imposed by the learned Metropolitan Magistrate of Court No.4 at Ahmedabad by his order passed on 29th September 1993 is under challenge in this appeal under Section 377 of the Code of Criminal Procedure, 1973 (the Code for brief).

2. The respondent has appeared neither in person nor through any advocate though duly served. I have therefore thought it fit to avail of services of Advocate Kum. Parul Patel as amicus curiae to assist this court on behalf of the respondent - accused.

3. It is not necessary to set out in detail the facts giving rise to this appeal. It may be sufficient to note that on 3rd April 1988 one workman working on the bleaching machine sustained injuries in absence of adequate safety measures. It came to the notice of the concerned Factory Inspector. He visited the factory on 13th June 1988. He found absence of adequate safety measures. Thereupon, he filed his complaint before the Metropolitan Magistrate of Court No.4 at Ahmedabad charging the respondent - accused with the offence punishable under Section 92 read with Section 21 (1) (iv) (c) of the Act. It came to be registered as Criminal Case No.4068 of 1988. The nature of the offence was explained to the respondent - accused for the purpose of recording his plea on 29th September 1993. He pleaded guilty to the charge. Thereupon, on his plea of guilt, by his order passed on 29th September 1993 in Criminal Case No.4068 of 1988, the learned Metropolitan Magistrate of Court No.4 at Ahmedabad sentenced the respondent accused to fine of Rs.500 in default simple imprisonment for 15 days.

4. It may be noted that the offence under Section 92 of the Act is punishable with imprisonment for a term which may extend to two years or with fine which may extend to one lakh rupees or with both. It cannot be gainsaid that the incident in question occurred only on account of inadequate safety measures provided in the machines contrary to the provisions contained in Section 21 (1) (iv) (c) of the Act. Such a lapse on the part of the respondent ought to be viewed seriously.

5. This court had an occasion to deal with a similar situation in Criminal Appeal No.456 of 1993 decided on 7th October 1996. In that case also, the learned trial Magistrate had imposed the sentence of fine only in the sum of Rs.500 for the offence punishable under Section 92

of the Act read with Rule 61 (1) (c) (i) of the Gujarat Factories Rules, 1963 (the Rules for brief) framed under the Act. In appeal questioning the adequacy of sentence, this court raised the sentence of fine from Rs.500 to Rs.50000. In this case also, the sentence of fine deserves to be modified from Rs.500 to Rs.50000 on the same reasoning.

6. I might have been inclined to impose substantive sentence of imprisonment also. However, as rightly submitted by learned Advocate Kum. Patel for the respondent - accused, the incident occurred some time on 3rd April 1988 and more than eight years have rolled by since then. Besides, runs the submission of learned Advocate Kum. Patel for the respondent - accused, the workman in question has not suffered any serious bodily injury. I think this aspect of the matter prompts me not to impose any substantive sentence of imprisonment in this case.

7. Before parting with the judgment, I shall fail in my duty if I do not record the note of appreciation for valuable assistance rendered by Kum. Parul Patel as amicus curiae in this case on behalf of the respondent herein. It must be said to her credit that she got herself ready to argue out the matter at a short notice.

8. In the result, this appeal is accepted. The order of sentence is modified and fine of Rs.50000 (rupees fifty thousand) in the place of fine of Rs.500 is imposed on the respondent - accused for the offence punishable under Section 92 read with Section 21 (1) (iv) (c) of the Act in default he will have to undergo simple imprisonment for three months. The respondent is directed to pay up the fine imposed by this judgment within two months from today.

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